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The Connecticut Association of Not-for-profit Providers For the Aging

Testimony to the Judiciary Committee

Submitted by Mag Morelli, President of CANPFA

March 25, 2011

In opposition to

Senate Bill 1165, An Act Concerning Criminal Liability of Corporations, Other Legal Entities and Their Agents

Good morning Senator Coleman, Representative Fox, and members of the Committee. My name is Mag Morelli and I am the president of the Connecticut Association of Not-for-profit Providers for the Aging (CANPFA). CANPFA is a membership organization representing over 130 mission-driven and not-for-profit provider organizations serving elderly and disabled individuals across the continuum of care including nursing homes, residential care homes, housing for the elderly, continuing care retirement communities, adult day centers, home care and assisted living agencies. CANPFA members are sponsored by religious, fraternal, community, and governmental organizations that are committed to providing quality care and services to their residents and clients. On behalf of CANPFA, I would like to submit testify in opposition to **Senate Bill 1165, An Act Concerning Criminal Liability of Corporations, Other Legal Entities and Their Agents**.

CANPFA believes that this bill expands the scope of criminal liability of corporations and individuals so broadly that it would place non-profit health care corporations at great risk and impede their ability to recruit volunteer board members. We submit the following comments with regard to the bill:

Corporate Criminal Liability

- Proposed section 2(b)(1) improperly expands the scope of corporate criminal liability.
- Before a corporation can be held criminally liable for the acts of its agents, the law requires that there be proof that (a) the agent committed an offense while acting within the scope of his/her employment, and (b) the agent was acting, at least in part, with the intent to benefit the corporation.
- Under section 2(b)(1)(A), a corporation may be convicted of a crime simply upon a determination that the legislative "intent" of the crime at issue is "to impose liability on a corporation" (section 2(b)(1)(A)). However, evidence of "legislative intent" is not sufficient to convict a corporation of a crime; there must be proof of the nature of the employee's crime and the circumstances under which it was committed.
- Similarly, Section 2(b)(1)(B) purports to impose corporate criminal liability based on a statutory reference to the "agents for whose conduct the corporation is accountable," without requiring proof that the agent committed the conduct in the scope of employment or with the intent, at least in part, to benefit the corporation.
- Likewise, that portion of section 2(b)(1)(B) that refers to statutory "circumstances under which the corporation is accountable" would only pass muster if those "circumstances" were that the agent's conduct satisfied the traditional two part test for corporate liability.

Individual Criminal Liability

- Ordinarily, an individual can be convicted of a crime only if he/she acted with criminal intent, e.g., "intentionally" (consciously trying to cause particular result or engage in particular conduct), "knowingly" (acting with awareness that conduct is of the type described in the applicable statute), "recklessly" (awareness of a substantial and unjustifiable risk that a result will occur and consciously disregarding that risk) or with "criminal negligence" (failure to perceive a substantial and unjustifiable risk, and requiring proof that person had a legal duty to conform to a certain standard of conduct and grossly deviated from that standard).
- Section (1)(b)(5) seeks to impose criminal liability for negligence, *i.e.*, based on an "omission to perform a legal duty imposed by laws of this state" For criminal liability to rest on negligence, however, that negligence must be "criminal negligence" as defined by Connecticut law.
- Section 2(c). Although contained in that part of the proposed statute dealing with corporate criminal liability, section 2(c) sets forth a circumstance where an *individual* agent of a corporation with "primary responsibility" for the discharge of a duty to act imposed by law on a corporation can be held criminally liable for a "reckless omission to act to the same extent as if such duty were imposed by law directly on such agent."
- This provision is objectionable if it seeks to impose criminal liability on an agent without any showing that the agent was aware of, or personally participated in, the crime.
- In certain limited circumstances involving a corporate employee's violation of a statute designed to protect public health and safety or the environment, the United States Supreme Court has approved the imposition of misdemeanor criminal liability on a so-called "responsible corporate officer" without any showing that the officer was aware of, or personally participated in, a crime, as long as there is sufficient evidence showing that the officer (1) was in a position to either prevent the conduct in the first place or promptly correct it, and (2) had failed to do so.
- The proposed statute applies this "responsible corporate officer" doctrine to *any* corporate duty. Thus, to the extent that liability would not be limited to statutes regulating potentially harmful or injurious items or the environment, the proposed statute goes well beyond what has been approved by the U.S. Supreme Court and is thus objectionable.
- Similarly, to the extent that this proposed statute seeks to codify the responsible corporate officer doctrine, it must be clear that (a) criminal liability attaches only if the person whose conduct is at issue could have, by virtue of his or her position, either prevented the failure to act in the first place, or promptly acted to correct the failure, but failed to do so, and (b) only misdemeanor criminal liability may be imposed.

Conclusion

The significant issues identified above must be addressed before passage of this Bill. Failure to address them will give rise, at the very least, to constitutional due process challenges in criminal proceedings.

Thank you for the opportunity to submit this testimony.

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